IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 134 of 1995

The Commissioner of Income Tax ... Applicant.

vs.

M/s. Mahindra & Mahindra Ltd. ..... Respondent

Mr. Parag Vyas i/b. H. D. Rathod for Applicant.
Mr. B. V. Jhaveri for Respondent

CORAM: V**. C. DAGA AND A. S. AGUIAR JJ.**

Date: 10th August, 2005.

P. C. :

1. By this reference arising out of I.T.A. No. 2750/Bom/1987, for Assessment Year 1979-80, under section 256(1) of the Income-tax Act the Tribunal has referred the following question of law for opinion at the instance of the Revenue:

(1) Whether on the facts and in the circumstances of the case, the sum of Rs. 1,72,414 due by the assessee to M/s. Jeep Corporation and written off by the lender was the taxable income of the assessee?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the entire initial contribution to the superannuation fund amounting to Rs.6,96,725/- was allowable deduction as against 1/5th of the contribution allowed in the year?

1. Both counsel appearing for the rival parties agree that the question no. 1, referred to above, have been covered by the judgment of this court in the case of **Mahindra & Mahindra Ltd. Vs. Commissioner of Income Tax in ITR No. 579 of 1987** decided on 29th January 2003. In that view of the mater the question is answered in the negative, i.e., in favour of the assessee, against the revenue.
2. Needless to mention that second question is also covered by the judgment of the Apex Court in the case of **Commissioner of Income Tax vs. Sirpur Paper Mills** , reported in [1999] 237 ITR 41 (SC) where the Apex Court held that deductions of contribution to superannuation fund is allowable as revenue expenditure. Reference is accordingly disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)

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